

SERVED: July 9, 2003

NTSB Order No. EA-5047

UNITED STATES OF AMERICA  
**NATIONAL TRANSPORTATION SAFETY BOARD**  
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD  
at its office in Washington, D.C.  
on the 7th day of July, 2003

---

Application of )

RADHA ABIRAMAN )

for an award of attorney's fees )  
and related expenses under the )  
Equal Access to Justice Act )

---

) Docket 303-EAJA-SE-15813

**OPINION AND ORDER**

The applicant (respondent in the underlying proceeding) has appealed from the Equal Access to Justice Act (EAJA) initial decision of Administrative Law Judge William A. Pope, II, served on November 27, 2002.<sup>1</sup> The law judge granted a motion to dismiss filed by the Administrator, rejecting as out of time applicant's application for recovery of EAJA<sup>2</sup> fees and expenses. The Administrator has replied in opposition to the appeal. We agree

---

<sup>1</sup> The law judge's initial decision, and his December 6, 2002 decision denying applicant's petition for reconsideration, are attached.

<sup>2</sup> Equal Access to Justice Act, 5 U.S.C. 504.

with the law judge's conclusion, and deny the appeal.

The parties agree on the following critical facts, which we also find as a matter of fact and law:

1. On August 28, 2002, the law judge issued his initial decision on the merits of respondent's appeal of the Administrator's complaint;

2. Absent a timely appeal, the initial decision would become administratively final. As a general rule, any appeal would have been due within 10 days. However, the tenth day, September 7<sup>th</sup>, fell on a Saturday. Thus, pursuant to our rules, the time for appeal was extended to the close of the first business day, Monday, September 9<sup>th</sup> (49 C.F.R. 821.47);

3. No appeal to the initial decision was taken;

4. The EAJA application was due "no later than 30 days after the Board's final disposition of the proceeding" (49 C.F.R. 826.24);

5. Final disposition is defined in this case as "the date on which an unappealed initial decision ... becomes administratively final," id.; and

6. The EAJA application was filed on October 10, 2002.

The question before us is when the unappealed initial decision became administratively final: on September 9th as the Administrator claims and the law judge found, or on September 10<sup>th</sup> as respondent argues. If, as the law judge found, the initial decision was final before September 10<sup>th</sup>, the EAJA application was one day late and must be rejected. (See

discussion below.) If, however, the initial decision did not become administratively final until September 10<sup>th</sup>, then the application, filed on October 10<sup>th</sup>, was timely and should be considered on the merits.<sup>3</sup>

The law judge concluded that the Administrator could have filed a timely appeal through the end of the day on September 9. He also concluded that the initial decision became final on that day as well, no appeal having been filed. Respondent contends that this is an impossibility: the decision cannot be both appealable and final on the same day. Thus, she argues, the decision could not be final until *after* the appeal time had run, i.e., after September 9.

In support of his decision, the law judge cited Administrator v. Holloway, NTSB Order No. EA-4155 (1994). In that case, an appeal had been filed and then withdrawn. The issue, for EAJA purposes, was whether the application was timely. We held in that case that final disposition occurred on the 30th day after the service date of our order dismissing the appeal.

Applicant cites Adams v. Securities and Exchange Commission, 287 F.2d 183 (D.C. Cir. 2002), for the proposition that the 30-day deadline begins to run after the time to appeal an initial decision has expired, and believes Melkonyan v. Sullivan, 501 U.S. 89, 95 (1991), also supports her interpretation.

---

<sup>3</sup> The law judge orally granted the Administrator's motion to postpone her answer to the application pending a decision on the motion to dismiss.

We conclude that the law judge's initial decision became administratively final on September 9.<sup>4</sup> Neither Melkoyan nor Adams investigates the propriety of particular time calculations. Melkoyan generally holds that the filing period begins after final judgment is entered *by the court in which it was pending*, and addresses the relationship between § 504 (the administrative agency EAJA statute) and 28 U.S.C. 2412 (the judicial EAJA statute). Adams, similarly, broadly holds that the filing deadline does not expire until 30 days after the time for appeal. Neither case directly informs our analysis here, as neither deals with the question of how the 30 days is to be calculated.

Respondent contends that because an appeal could have been filed through September 9<sup>th</sup> the decision was not administratively final until September 10<sup>th</sup> (and, therefore, that the EAJA application was not due until October 10<sup>th</sup>). None of the cases cited by respondent hold, as respondent argues, that a decision cannot be appealable and final on the same day, and we disagree.

If an appeal is timely filed, the initial decision clearly is not administratively final. If no appeal is filed, the decision becomes final automatically on the same date as the appeal would have been due. Two things are *not* happening at the same time, as respondent suggests. Instead, one or the other happens on the 30<sup>th</sup> day. There is nothing unusual or surprising

---

<sup>4</sup> The law judge's conclusion is consistent with the language of our relevant procedural rule, which specifies that "[t]he last day of [a prescribed] period is to be included ..." in the

about such a result. Indeed, originally applicant suggested that she might have miscalculated the deadline. And, although Adams suggests that the EAJA procedures should not be a trap for the unwary (a principle with which we do not disagree), neither Adams nor Melkoyan justify or support extending a deadline that is set by statute. We continue to believe that we are without authority to do so, regardless of the applicant's reason for being late, and the court cases in agreement with this principle are too numerous to cite.

Applicant's position would have considerable practical problems as well, resulting in added complexity in deadline calculations. Parties are well familiar with 30-day calculations; applicant would have them count 31 days. It is important that procedural rules be straightforward and easy to apply.

**ACCORDINGLY, IT IS ORDERED THAT:**

Applicant's appeal is denied and her EAJA application is rejected as late-filed.

ENGLEMAN, Chairman, ROSENKER, Vice Chairman, and GOGLIA, CARMODY, and HEALING, Members of the Board, concurred in the above opinion and order.

---

(continued...)

computation of a time limit. See Rule 821.10, 49 CFR § 821.10.